

## STATEMENT OF EMERGENCY

907 KAR 1:030E

(1) This emergency administrative regulation is being promulgated to establish the use of criteria by the Department for Medicaid Services to determine the clinical appropriateness of any given care.

(2) This action must be taken on an emergency basis to ensure the viability of the Medicaid program and to ensure the appropriateness of care provided to Medicaid recipients.

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

(4) The ordinary administrative regulation is identical to this emergency administrative regulation except that the emergency regulation explicitly states August 1, 2006 as the effective date. The effective date is inappropriate for the ordinary administrative regulation given that it will not be adopted by August 1, 2006.

---

Ernie Fletcher  
Governor

---

Mark D. Birdwhistell, Secretary  
Cabinet for Health and Family Services

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Long Term Care and Community Alternatives

4 (Emergency Amendment)

5 907 KAR 1:030E. Home health agency services.

6 RELATES TO: KRS 205.502

7 STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3)[, ~~EO 2004-~~  
8 ~~726~~]

9 NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004,~~  
10 ~~reorganized the Cabinet for Health Services and placed the Department for Medicaid Ser-~~  
11 ~~vices and the Medicaid Program under the Cabinet for Health and Family Services.] The~~  
12 Cabinet for Health and Family Services, Department for Medicaid Services has responsi-  
13 bility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by ad-  
14 ministrative regulation, to comply with any requirement that may be imposed or opportu-  
15 nity presented by federal law for the provision of Medical Assistance to Kentucky's indi-  
16 gent citizenry. This administrative regulation establishes the provisions relating to home  
17 health care services for which payment shall be made by the Medicaid Program in behalf  
18 of both the categorically needy and the medically needy.

19 Section 1. Definitions. (1) "Department" means the Department for Medicaid Services  
20 or its designee.

21 (2) "Home health agency" or "HHA" means a Medicare and Medicaid-certified

agency licensed in accordance with 902 KAR 20:081.

(3) "Home health aide" means a person who meets the home health aide requirements established in 902 KAR 20:081.

(4) "Licensed practical nurse" or "LPN" means a person who is:

(a) Licensed in accordance with KRS 314.051; and

(b) Under the supervision of a registered nurse.

(5) "Medical social worker" means a person who meets the medical social worker requirements as established in 902 KAR 20:081.

(6) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(7) "Nursing service" means the delivery of medication, or treatment by a registered nurse or a licensed practical nurse supervised by a registered nurse, consistent with KRS Chapter 314 scope of practice provisions and the Kentucky Board of Nursing scope of practice determination guidelines.

(8) "Occupational therapist" means a person who meets the occupational therapist requirements established in 902 KAR 20:081.

(9) "Physical therapist" means a person who meets the physical therapist requirements established in 902 KAR 20:081.

(10) "Place of residence" means, excluding a hospital or nursing facility, the location at which a recipient resides.

(11) "Plan of care" means a written plan which shall:

(a) Stipulate the type, nature, frequency and duration of a service; and

(b) Be reviewed and signed by a physician and HHA staff person at least every sixty

1 (60) days.

2 (12) "Qualified medical social worker" means a person who meets the qualified medi-  
3 cal social worker requirements as established in 902 KAR 20:081.

4 (13) "Qualified social work assistant" means a social work assistant as defined in 42  
5 CFR 484.4.

6 (14) "Registered nurse" or "RN" means a person licensed in accordance with KRS  
7 314.041.

8 (15) "Speech pathologist" means a person who meets the speech pathologist re-  
9 quirements established in 902 KAR 20:081.

10 Section 2. Conditions of Participation. (1) In order to provide home health services, a  
11 provider shall:

12 (a) Be an HHA; and

13 (b) Comply with 907 KAR 1:671, 907 KAR 1:672, and 907 KAR 1:673; and

14 (c) Comply with the Home Health Services Manual.

15 (2) A home health provider shall maintain a medical record for each recipient for  
16 whom services are provided. The medical record shall:

17 (a) Substantiate the services billed to the department and be signed and dated by  
18 HHA staff;

19 (b) Contain a copy of the plan of care;

20 (c) Document verbal orders from the physician, if applicable;

21 (d) Be retained for a minimum of five (5) years from the date a covered service is  
22 provided, except in the case of a minor, whose records shall be retained for three (3)  
23 years after the recipient reaches the age of majority under state law, whichever is long-

est;

(e) Be kept in an organized central file within the HHA; and

(f) Be made available to the department upon request.

Section 3. Covered Services. (1) A home health service shall:

(a) ~~[Effective November 15, 2001,]~~ Be prior authorized by the department to ensure that the service or modification of the service is:

1. Medically necessary and adequate for the needs of the recipient; and

2. Effective August 1, 2006, clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

(b) Be provided pursuant to a plan of care; and

(c) Be provided in a recipient's place of residence.

(2) The following services provided to a recipient by a home health provider, who meets the requirements in Section 2 of this administrative regulation, shall be covered by the department:

(a) A nursing service which shall:

1. Include part-time or intermittent nursing services;

2. If provided daily, be limited to thirty (30) days unless additional days are prior authorized by the department;

(b) A therapy service which shall:

1. Include physical therapy provided by a physical therapist or a qualified physical therapist assistant as defined in 42 CFR 484.4 who is under the supervision of a qualified physical therapist;

2. Include occupational therapy provided by an occupational therapist or a qualified

1 occupational therapy assistant as defined in 42 CFR 484.4 who is under the supervision  
2 of a qualified occupational therapist;

3 3. Include speech therapy provided by or under the supervision of a speech patholo-  
4 gist;

5 4. Be provided pursuant to a plan of treatment which shall be developed by the ap-  
6 propriate qualified therapist and physician; [and

7 ~~5. Be provided in accordance with 907 KAR 1:023 and comply with the physical ther-~~  
8 ~~apy, occupational therapy and speech therapy requirements established in "Technical~~  
9 ~~Criteria for Reviewing Ancillary Services for Adults, February 2000 Edition" or "Techni-~~  
10 ~~cal Criteria for Reviewing Ancillary Services for Pediatrics, April 2000 Edition";]~~

11 (c) A home health aide service which shall:

12 1. Include the performance of simple procedures as an extension of therapy services,  
13 personal care, range of motion exercises and ambulation, assistance with medications  
14 that are ordinarily self-administered, reporting a change in the recipient's condition and  
15 needs, incidental household services which are essential to the recipient's health care at  
16 home when provided in the course of a regular visit, and completing appropriate re-  
17 cords;

18 2. Be provided by a home health aide who is supervised at least every two (2) weeks  
19 by:

20 a. An RN;

21 b. A physical therapist, for any physical therapy services that are provided by the  
22 home health aide;

23 c. An occupational therapist, for any occupational therapy services that are provided

1 by the home health aide; or

2 d. A speech therapist, for any speech therapy services that are provided by the home  
3 health aide; and

4 3. Be a service that the recipient is either physically or mentally unable to perform;

5 (d) A medical social service which shall:

6 1. Be provided by a qualified medical social worker or qualified social work assistant;  
7 and

8 2. Be provided in conjunction with at least one (1) other service listed in this section;

9 (e) A disposable medical supply which shall:

10 1. Include the following:

11 a. An adapter;

12 b. An applicator;

13 c. Drainage supplies;

14 d. Dressing supplies;

15 e. Catheter, ileostomy or ureostomy supplies;

16 f. Colostomy supplies;

17 g. A detection reagent for other than sugar or ketone;

18 h. Except for the limitations contained in Section 4(5) of this administrative regulation,  
19 diapers, underpads or incontinent pants;

20 i. An egg crate mattress;

21 j. An enema or elimination supplies including a fleet enema or dulcolax suppository;

22 k. Gastrostomy supplies;

23 l. Gloves;

- m. Inhalation therapy supplies;
- n. Irrigation solutions;
- o. IV therapy supplies;
- p. Lambs wool or a synthetic pad;
- q. A lotion, powder or cream for an invalid or bedfast recipient;
- r. A nipple if designed for cleft palate;
- s. Inexpensive occupational therapy supplies which may include a plastic utensil holder or a long arm reacher;
- t. Suction supplies;
- u. Support supplies which may include antiembolism stockings, support vest, support gauntlet, or support glove;
- v. A syringe or needle (excluding an insulin syringe for a diabetic);
- w. Tracheostomy supplies; or
- x. Tubing; and

2. If provided to a recipient who is not in need of a home health visit, be required to maintain him in his place of residence. A physician shall certify the medical necessity of a disposable medical supply by completing and signing a MAP 248 form; and

(f) An enteral nutritional product which shall:

- 1. Be ingested orally or delivered by tube into the gastrointestinal tract; and
- 2. Provide for the total or supplemental nutrition of a recipient.

Section 4. Limitations and Exclusions from Coverage. (1) A domestic or housekeeping service which is unrelated to the health care of a recipient shall not be covered.

(2) A medical social service shall not be covered unless provided in conjunction with



another service pursuant to Section 3 of this administrative regulation.

(3) Supplies for personal hygiene shall not be covered.;

(4) Drugs shall not be covered.

(5) Disposable diapers shall not be covered for a recipient age three (3) years and under regardless of the recipient's medical condition.

(6) Except for the first week following a home delivery, a newborn or postpartum service without the presence of a medical complication shall not be covered.

(7) A recipient who has elected to receive hospice care shall not be eligible to receive coverage under the home health program.

Section 5. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) MAP-248, Commonwealth of Kentucky, Cabinet for Health Services, Department for Medicaid Services, December 2001 revision;

(b) Home Health Services Manual, June 2006 edition [~~November 1993 edition~~];

(c) Technical Criteria for Reviewing Ancillary Services for Adults, February 2000 Edition; and

(d) Technical Criteria for Reviewing Ancillary Services for Pediatrics, April 2000 Edi-

1     tion.

2           (2) This material may be inspected, copied or obtained, subject to applicable copy-  
3     right law, at the Department for Medicaid Services, 275 East Main Street, Frankfort,  
4     Kentucky 40621, Monday through Friday 8 a.m. to 4:30 p.m.

907 KAR 1:030E

REVIEWED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
J. Thomas Badgett, MD, PhD, Acting Commissioner  
Department for Medicaid Services

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mike Burnside, Undersecretary  
Administrative and Fiscal Affairs

APPROVED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mark D. Birdwhistell, Secretary  
Cabinet for Health and Family Services

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:030E

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact Person: Stuart Owen or Stephanie Brammer-Barnes (502-564-6204)

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes the coverages and provisions for home health services.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverages and provisions for home health services.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverages and provisions for home health services.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing the coverages and provisions for home health services.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: The amendment establishes the utilization of criteria by the department to determine the clinical appropriateness of any given service.
  - (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure appropriateness of care and to maintain the viability of the Medicaid program.
  - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing the use of criteria to determine the clinical appropriateness of care.
  - (d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation assists in the effective administration of the statutes by establishing the use of criteria to determine the clinical appropriateness of care.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect all home health providers and recipients.
- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the

change if it is an amendment: Criteria will be established for providers regarding the clinical appropriateness of care.

- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: The Department for Medicaid Services (DMS) is unable to determine a precise aggregate fiscal impact of the use of the criteria established in 907 KAR 3:130 to determine clinical appropriateness for multiple programs; however, anticipates a savings of at least \$2.5 million (\$1.7 million federal funds; \$0.8 million state funds) annually.
  - (b) On a continuing basis: DMS is unable to determine a precise aggregate fiscal impact of the use of the criteria established in 907 KAR 3:130 to determine clinical appropriateness for multiple programs; however, anticipates a savings of at least \$2.5 million (\$1.7 million federal funds; \$0.8 million state funds) annually.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used)

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The “equal protection” and “due process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

COMMONWEALTH OF KENTUCKY  
CABINET FOR HEALTH AND FAMILY SERVICES  
DEPARTMENT FOR MEDICAID SERVICES

907 KAR 1:030E (Home Health Services)

Summary of Material Incorporated by Reference

The “Home Health Services Manual, June 2006 edition” is revised to insert language, consistent with the administrative regulation, regarding the use of criteria in 907 KAR 3:130 to determine whether a service is clinically appropriate. Section IV, pages 4.1 and 4.2 are revised. The manual contains 226 pages.